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SUPER LAW GROUP, LLC

April 17, 2018

Via Certified Mail, Return Receipt Requested

Catalytic Converter Corp.
175-15 Liberty Avenue
Jamaica, New York 11433

CCC Scrap
175-15 Liberty Avenue
Jamaica, New York 11433

A&B Core Supplier, Inc.
175-15 Liberty Avenue
Jamaica, New York 11433

Steve Shalit
175-15 Liberty Avenue
Jamaica, New York 11433

Avinoam Shalit
175-15 Liberty Avenue
Jamaica, New York 11433

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

I write on behalf of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper)¹ ("Baykeeper") to notify you of Baykeeper's intent to file suit against Catalytic Converter Corp., A&B Core Supplier, Inc., CCC Scrap, Steve Shalit, and Avinoam Shalit (collectively "CCC Scrap") pursuant to Section 505(a) of the federal Clean Water Act ("CWA").²

Baykeeper intends to file suit, as an organization and on behalf of adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate

¹ Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), is a non-profit public interest 501(c)(3) corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy New York Harbor and Jamaica Bay, which are polluted by industrial stormwater runoff discharged by facilities in New York City and Nassau County that are or should be covered by the General Permit.

² 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.³

Baykeeper intends to take legal action because CCC Scrap is discharging polluted stormwater from its scrap metal recycling facility, located at 175-15 Liberty Avenue in Jamaica, New York 11433 to the municipal separate storm sewer system and the waters of the United States without a permit. This is a violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.⁴ Further, CCC Scrap has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)⁵ issued by the New York State Department of Environmental Conservation (“DEC”), in violation of Sections 402(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is provided in government records and online resources as 175-15 Liberty Avenue, Jamaica, New York. For clarity, the Facility location can be uniquely identified by Queens County’s block 10219, Lot 301. The waters of the United States that are polluted by CCC Scrap’s Facility is Jamaica Bay.

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁶ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 6,000 river miles, 319,000 acres of larger waterbodies, 900 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

⁴ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-17-004, (hereinafter “General Permit”), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. The current General Permit became effective on March 1, 2018 and will expire on February 28, 2023.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

⁷ See EPA, *Watershed Assessment, Tracking and Environmental Results*, New York Assessment Data for 2014, https://ofmpub.epa.gov/waters10/attains_state.control?p_state=NY&p_cycle=2014#total_assessed_waters (last visited April 17, 2018).

Stormwater discharges from the Facility introduce a host of industrial pollutants into Jamaica Bay. The Clean Water Act provides a regulatory regime for mitigating the worst impacts of industrial stormwater pollution, but the CCC Scrap site is not in compliance with the basic requirements of that regime.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. CCC Scrap is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.⁸ CCC Scrap's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA⁹ and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁰ The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, (a) receiving, processing, and transporting waste materials, namely scrap metal, outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges that reach Jamaica Bay.

CCC Scrap's activities at the Facility include but are not limited to the purchase, collection, processing, storage, reshipment and resale of scrap metal and other recyclable wastes, as well as operating a waste transfer station that is open to the public. These activities include operation and storage of industrial equipment, and much of this activity is conducted outdoors. In carrying out these activities at the Facility, CCC Scrap engages in storing and handling materials in a manner that exposes pollutants to precipitation and snowmelt. The stormwater discharged into Jamaica Bay can bring solids that suspend or dissolve in stormwater, metals such as zinc, copper, lead, cadmium, chromium, and arsenic; hydraulic fluids, PCBs, mercury, and other pollutants into Jamaica Bay.¹¹

Trucks and other vehicles driving on and off the property are also point sources of pollution. The Facility uses heavy vehicles and stationary machinery outdoors. Besides the wastes they

⁸ See CWA §§ 301(a), 402.

⁹ 33 U.S.C. § 1362(12).

¹⁰ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

¹¹ See EPA, "Industrial Stormwater Fact Sheet Series, Sector N: Scrap Recycling and Waste Recycling Facilities," available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_n_scraprecycling.pdf.

carry, vehicles and industrial equipment at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because CCC Scrap fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Baykeeper has observed the release of polluted stormwater at the Facility. The entire Facility is paved. Baykeeper has observed stormwater flowing off the site onto Liberty Avenue, where there are storm drains that connect to the MS4 system, which flows to Jamaica Bay. The stormwater that runs off the Facility is discolored and contains debris, suspended solids, and other pollutants.

Jamaica Bay is a “water of the United States,” as defined in 40 C.F.R. § 122.2 and, therefore, “navigable water” as defined in Section 502(7) of the CWA. CCC Scrap does not have a NPDES permit for these discharges of pollutants. Thus, CCC Scrap is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

B. CCC Scrap Is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

CCC Scrap is engaged in the business of accepting, breaking up, sorting and distributing scrap and waste materials and, therefore, is an industrial discharger with a primary Standard Industrial Classification (“SIC”) Code of 5093. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, CCC Scrap must apply for coverage under the General Permit or an individual NPDES permit for its discharge of polluted stormwater. In addition, CCC Scrap must apply for an individual NPDES permit if the Facility is discharging process wastewater or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit (for example, truck washwater is a non-stormwater discharge that is not eligible for coverage under the General Permit). By failing to apply for coverage under the General Permit or an individual permit, CCC Scrap is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).¹²

¹² Sections 301(a) and 402(a) and (p) make it unlawful for CCC Scrap to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require CCC Scrap to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

To be eligible to discharge under the General Permit, must submit to DEC a registration form called a "Notice of Intent."¹³ Notice of Intent forms are available online from DEC. CCC Scrap has failed to prepare and file a Notice of Intent or an application for an individual permit.¹⁴

C. CCC Scrap Is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, CCC Scrap must comply at all times with the requirements of the General Permit (or an individual permit).¹⁵ By discharging stormwater associated with industrial activity without complying with the General Permit, CCC Scrap is violating CWA Sections 301(a) and 402(a) and (p).¹⁶ The main General Permit requirements that CCC Scrap has failed and continue to fail to meet are explained further below.

1. CCC Scrap has failed to develop and implement a Stormwater Pollution Prevention Plan.

Before submitting a registration form, CCC Scrap must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.¹⁷ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.¹⁸

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.¹⁹

¹³ See General Permit, Part I.D.2. In notifying CCC Scrap that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Baykeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

¹⁴ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

¹⁵ This section discusses the compliance requirements of the General Permit. If CCC Scrap elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus CCC Scrap will still be required to comply with all of the following.

¹⁶ Sections 301(a) and 402(a) and (p) make it unlawful for CCC Scrap to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

¹⁷ See General Permit Part III.C.

¹⁸ See General Permit Part III.A.

¹⁹ See *Id.*

CCC Scrap has failed to develop and implement a legally compliant SWPPP, as required by Part III of the General Permit.²⁰

2. CCC Scrap has failed to implement control measures and Best Management Practices that are selected to meet best available technology standards.

CCC Scrap cannot legally discharge stormwater under the General Permit until it implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.²¹ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

“Effluent limits are required to *minimize the discharge* of pollutants.”²² The General Permit’s effluent limits include both numeric limits specific to certain sectors,²³ as well as non-numeric technology-based effluent limits that apply to all facilities.²⁴ These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater²⁵ and minimizing the discharge of pollutants in stormwater²⁶ “to the extent achievable using *control measures* [including best management practices] that are technologically available and economically practicable and achievable in light of best industry practice.”²⁷

CCC Scrap has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VII of the General Permit.

3. CCC Scrap has failed to conduct routine site inspections and comply with monitoring, recordkeeping, and reporting requirements.

CCC Scrap must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.²⁸ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.²⁹

²⁰ On information and belief, no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

²¹ See General Permit Part II.A.D; *see also* Part VII (setting forth sector-specific control measures and practices).

²² General Permit Part II.

²³ See General Permit, Part VII.

²⁴ See General Permit, Part II.

²⁵ See *Id.*

²⁶ See *Id.*

²⁷ See *Id.*

²⁸ See General Permit, Part IV.A.1

²⁹ See *Id.*

In addition, qualified facility personnel must carry out routine inspections at least quarterly.³⁰ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.³¹ Such deficiencies must then be addressed through corrective actions in accordance with Part V of the General Permit.

The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.³² In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least semi-annually.³³
- conduct visual monitoring of stormwater discharges at least quarterly;³⁴
- perform an annual dry weather inspection to detect non-stormwater discharges;³⁵
- inspect, sample and monitor discharges from coal pile runoff;³⁶
- inspect, sample and monitor or discharges from secondary containment structures and transfer areas;³⁷
- document storm events during which any samples are taken;³⁸
- keep records of the monitoring with the Facility's SWPPP;³⁹ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁴⁰

Because CCC Scrap engages in industrial activities associated under Sector N, sampling is required for:

³⁰ See General Permit, Part IV.B.

³¹ See *Id.*

³² See General Permit, Part IV.F.1, 2

³³ See General Permit, Part IV.B.1.c.

³⁴ See General Permit, Part IV.B.1.a.

³⁵ See General Permit, Part IV.C

³⁶ See General Permit, Part IV.F.1

³⁷ See General Permit, Part IV.D.4

³⁸ See General Permit, Part IV.D.3

³⁹ See General Permit, Part IV.F.3

⁴⁰ See General Permit, Part VI

- Total Mercury;
- PCBs;
- Total Suspended Solids;
- Chemical Demand Oxygen;
- Oil and Grease;
- Total Recoverable Aluminum;
- Total Recoverable Cadmium;
- Total Chromium;
- Total Recoverable Copper;
- Total Recoverable Iron;
- Total Recoverable Lead;
- Total Recoverable Zinc;
- Benzene;
- Ethylbenzene
- Toluene; and
- Xylene⁴¹

Baykeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well. This notice provides CCC Scrap with sufficient information to identify the applicable standards and limitations.

CCC Scrap has failed to conduct the required annual, semi-annual, quarterly and other routine inspections, monitoring, and testing, as required by the General Permit. CCC Scrap also has failed to retain records and submit monitoring reports to DEC, as required by the General Permit

4. CCC Scrap has failed to comply with additional requirements located in Part VII of the General Permit.

As noted above, the General Permit contains various requirements specific to recycling facilities. These requirements, some of which are referenced above, are collected in Part VII of the General Permit. They include:⁴²

- A requirement that the SWPPP include a program to control materials received for processing:
 - Notifying suppliers/public which scrap materials will not be accepted at the facility or are only accepted under certain conditions;
 - Develop and implement procedures to inspect inbound shipments of recyclable materials;

⁴¹ See General Permit, Part VII, Section N.

⁴² See *Id.*

- Develop and distribute educational material targeting the public and/or commercial drivers of inbound vehicles; and
 - Training targeted for personnel engaged in the inspection and acceptance of inbound recyclable materials.
- A requirement that the SWPPP address BMPs to minimize contact of particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Good housekeeping measures, including frequent sweeping of haul and access roads and the use of dry absorbent or wet vacuum clean up methods, to contain or dispose/recycle residual liquids originating from recyclable containers; and
 - Good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas.
- A requirement that the SWPPP describe BMPs to minimize contact of stormwater runoff with stockpiled materials, processed materials and non-recyclable wastes. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Store the equivalent one day's volume of recyclable materials indoors;
 - Containment of diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading installed where appropriate to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;
 - Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading;
 - Cover containment bins, dumpsters, roll off boxes;
 - Permanent or semi permanent covers over areas where materials are transferred, stored or stockpiled;
 - Install a sump/pump with each containment pit, and discharge collected fluids to a sanitary sewer system; and
 - Sediment traps, vegetated swales and strips, catch basin filters and sand filters to facilitate settling or filtering of sediments.
- A requirement that the SWPPP address BMPs to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. The SWPPP shall document consideration of the following BMPs (or their equivalents):
 - Prohibit the practice of allowing washwater from tipping floors or other processing areas from discharging to the storm sewer system;
 - Disconnect or seal off all floor drains connected to the storm sewer system;
 - Drums containing liquids, especially oil and lubricants, should be stored: indoors; in a bermed area; in overpack containers or spill pallets; or in similar containment devices;

- Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans shall be inspected for leaks and potential overflows and all liquids properly disposed of in accordance with RCRA requirements; and
- Liquid wastes, including used oil, shall be stored in materially compatible and non-leaking containers, and be disposed or recycled in accordance with all requirements under the RCRA, and State or local requirements.⁴³

CCC Scrap has failed to comply with the additional requirements of Part VII of the General Permit.

In sum, CCC Scrap's discharge of stormwater associated with industrial activities without a permit, its failure to apply for permit coverage, and its failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

The entities referred to collectively in this letter as CCC Scrap are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. On information and belief, CCC Scrap has operated the Facility for at least five years. CCC Scrap has operational control over the day-to-day industrial activities at this Facility. Therefore, CCC Scrap is responsible for managing stormwater at the Facility in compliance with the CWA. Baykeeper hereby puts CCC Scrap on notice that if Baykeeper subsequently identifies additional persons as also being responsible for the violations set forth above, Baykeeper intends to include those persons in this action.

IV.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 175-15 Liberty Avenue, Jamaica, NY 11433, Block 10219, Lot 301 in Queens County. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.⁴⁴

⁴³ See General Permit, Part VII, Sector N.

⁴⁴ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. See, e.g., *Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), aff'd 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 439 (D. Md. 2010); *United*

V.

DATES OF VIOLATION

The requirement to obtain permit coverage for the discharge of stormwater associated with industrial activity came into effect at least five years ago. Therefore, every day upon which CCC Scrap has failed to apply for permit coverage for the past five years is a separate violation of Sections 301(a), 402(p)(3)(A) and (p)(4)(A) of the CWA and EPA's regulations implementing the CWA.

Additionally, CCC Scrap has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day in the last five years on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (*i.e.*, snowmelt) over 0.1 inches.

Finally, if CCC Scrap seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which CCC Scrap claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

CCC Scrap is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Baykeeper after the date of this Notice of Intent to File Suit.⁴⁵ These violations are ongoing, and, barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

Baykeeper will ask the court to order CCC Scrap to comply with the Clean Water Act, to pay penalties, and to pay Baykeeper's costs and legal fees.

Anglers v. Kaiser Sand & Gravel Co., No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995)

⁴⁵ See *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

First, Baykeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Baykeeper will seek an order from the Court requiring CCC Scrap to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁴⁶ each separate violation of the CWA subjects CCC Scrap to a penalty not to exceed \$37,500 per day for each violation that occurred prior to November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.⁴⁷ Baykeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Baykeeper will seek recovery of its litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper).
52 West Front Street
Keyport, NJ 07735
(732) 888-9870
Attn.: Greg Remaud, Deputy Director

VIII.

IDENTIFICATION OF COUNSEL

Baykeeper is represented by legal counsel in this matter. The name, address, and telephone number of Baykeeper's attorneys are:

Nicholas W. Tapert
Edan Rotenberg
Super Law Group, LLC
180 Maiden Lane, Suite 603
New York, New York 10038
(212) 242-2355

⁴⁶ 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁴⁷ 40 C.F.R. §§ 19.2 and .4.

IX.

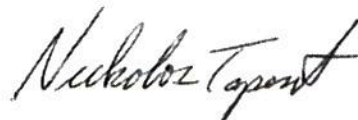
CONCLUSION

The foregoing provides more than sufficient information to permit CCC Scrap to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁴⁸

If CCC Scrap has developed a SWPPP, Baykeeper requests that CCC Scrap send a copy to the undersigned attorney.⁴⁹ Otherwise, Baykeeper encourages CCC Scrap to begin developing a SWPPP immediately after receiving this letter and ask that CCC Scrap please inform the undersigned attorney of its efforts so that Baykeeper can work with CCC Scrap to avoid disputes over the contents of the SWPPP.⁵⁰

During the sixty-day notice period, Baykeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If CCC Scrap wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Nicholas W. Tapert, Esq.
Super Law Group, LLC
180 Maiden Lane, Suite 603

⁴⁸ 40 C.F.R. § 135.3(a).

⁴⁹ Note that under Part III.C.2 of the General Permit, the owner or operator of a facility “must make a copy of the SWPPP available to the public within 14 days of receipt of a written request.”

⁵⁰ Baykeeper will not send a new notice letter in response to any effort CCC Scrap makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are “not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant’s] post-notice compliance efforts.” *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) (“subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant’s later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b).”); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff’s notice letter based on inadequacies of defendant’s original SWPPP held sufficient to establish court’s jurisdiction, even though defendant later prepared a revised SWPPP).

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April 17, 2018
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New York, New York 10038
(212) 242-2355 ext. 3

cc:

Scott Pruitt, Administrator
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Peter D. Lopez, EPA Region 2 Administrator
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